

# Tennessee Law Enforcement Training Academy

# Legal Briefs

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## Director's Corner

By: Brian Grisham  
Director, TLETA

### *TLETA Legal Briefs*

#### Editor

- Ray Farris,  
Legal Instructor

#### Contributors

- Brian Grisham,  
Director
- Dale Robinson,  
Primary Legal  
Instructor
- Travis McNeal  
Technical Advisor

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We have seen a few changes here at the Academy since our last newsletter. The biggest is that we, by executive order of Governor Phil Bredesen, have moved from the Department of Safety to the Department of Commerce and Insurance. However, one thing that has not changed is our ongoing commitment to training excellence. We will graduate more officers from basic police school this year than any other year since changing to a ten-week schedule. This will be our busiest year ever for specialized schools, with total offerings over sixty. Our new commissioner, Paula Flowers, is dedicated to providing the best training in the country.

I hope you find useful the second installment of the TLETA Legal Briefs Newsletter and, as always, feel free to contact me or the editor if you have issues you would like to see addressed in the future.



## Editor's Comments

Welcome to the second installment of the Tennessee Law Enforcement Training Academy Legal Briefs. The Legal Division of TLETA is dedicated to providing law enforcement officers with quality, useful and timely Supreme Court reviews, interesting developments in the law, and legal articles written to clarify various issues. The views expressed in these articles are the opinions of the author and do not necessarily reflect the views of TLETA or the Department of Commerce and Insurance.

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# Case Briefs

## UNITED STATES SUPREME COURT

**Hudson v. Michigan**  
126 S. Ct. 2159  
June 15, 2006

By: Ray Farris

### SUMMARY:

Violation of the Fourth Amendment's "knock and announce" rule, without more, will not result in suppression of evidence obtained without a valid warrant.

### FACTS:

Police obtained a warrant authorizing a search for drugs and firearms at the home of Mr. Hudson. They discovered both. When the police arrived to execute the warrant, they announced their presence but waited only a short time – 3 - 5 seconds – before opening the unlocked front door. Hudson moved to suppress the evidence found based upon the fact that the premature entry violated his Fourth Amendment rights.

### ISSUE:

Whether the exclusionary rule is the appropriate remedy for a violation of the Fourth Amendment's "knock and announce" rule.

**HELD:** No

### DISCUSSION:

While the Fourth Amendment requires the "knock and announce" rule, not every violation of the Fourth Amendment

triggers the exclusion of evidence. The interest protected by the "knock and announce" rule include human life and limb, provoked violence from a surprised resident, and privacy and dignity. The rule has never protected one's interest in preventing the government from seeing or taking evidence described in a warrant. Since the interests violated here have nothing to do with the seizure of the evidence, the exclusionary rule is inapplicable.

**Georgia v. Randolph**  
126 S. Ct. 1515  
March 22, 2006

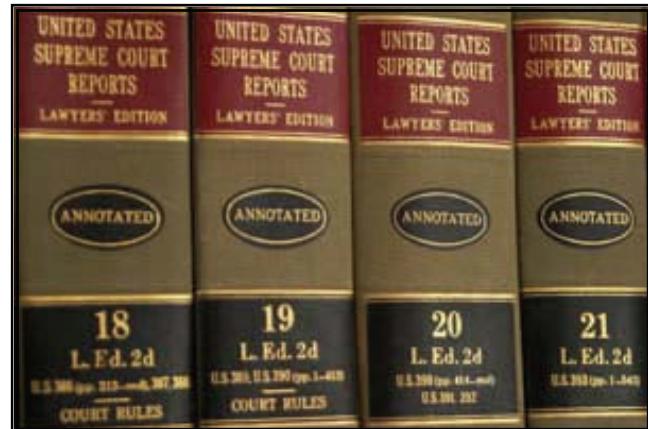
By: Ray Farris

### SUMMARY:

A consent to search a residence by one resident over the verbal refusal to search by another resident is an unreasonable search under the Fourth Amendment.

### FACTS:

A husband and wife separated in May, 2001 and she left the marital residence and went to stay with family in Canada. The wife returned in July and, on July 6, called police concerning a domestic dispute with her husband concerning their son. She voluntarily told police that her husband was a cocaine user and had items in the house. The sergeant on the scene asked the husband for consent to search, which he unequivocally refused. Then, the sergeant asked the wife who gave consent and took him to her husband's bedroom where he found a drinking straw with a



powdery residue he suspected of being cocaine.

### ISSUE:

Whether one consenting tenant's authority to consent to a search prevails over the co-tenant's objections.

**HELD:** No

### DISCUSSION:

The Fourth Amendment recognizes a valid warrantless entry and search of a premises when the police obtain the voluntary consent of an occupant who shares, or is reasonably believed to share, common authority over the property and no present co-tenant objects. There is no societal or legal understanding of a superior and inferior as between co-tenants. A co-tenant who has an interest in bringing criminal activity to light or in deflecting suspicion from himself can tell police what he knows for use in obtaining a warrant. Here the husband's refusal is clear, and nothing in the record justifies the search on grounds independent of his wife's consent.

# Statutory Update

## TENNESSEE CODE ANNOTATED

Public Chapter No. 653	Public Chapter No. 849	Public Chapter No. 853	Public Chapter No. 900
<b>HB2537 by Fowlkes/SB3433 by Jackson</b>	<b>SB3189 by Cooper/HB3188 by Harmon/Watson</b>	<b>SB 3702 by Woodson/HB3678 by Dunn</b>	<b>SB2953 by Black/HB3061 by Maggart</b>
This act amends T.C.A. 55-8-132, the current “move over law”. This act would increase the penalty from a Class C misdemeanor to a Class B misdemeanor punishable by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500), or imprisonment not greater than thirty (30) days, or both.	This act creates T.C.A. 41-4-143 which sets minimum standards for persons employed as a jailer, jail administrator, corrections officer, or guard in a county jail after July 1, 2006. Requirements include:  Be at least 18 years of age; U. S. citizen; High school diploma or GED; No felony convictions; Honorable discharge from military; Fingerprints on file with TBI; Passed physical; Departmental investigation/ background Psychological	This act amends T.C.A. 36-16-610 by making it a Class C misdemeanor for a person to knowingly possess or knowingly operate a vehicle with a radar jamming device. The act also makes it a Class B misdemeanor for a person to knowingly use a radar jamming device for the purposes of interfering with radar signals or laser signals. A “radar jamming device” is defined as any active or passive device, instrument, mechanism, or equipment that is designed or intended to interfere with, disrupt, or scramble the radar or laser that is used by law enforcement agencies and officers to measure the speed of motor vehicles.	This act amends T.C.A. 39-15-413, the current law relative to a person giving or buying alcoholic beverages or beer on behalf of a minor. The act amends the criminal code to increase the penalty to a Class A misdemeanor. The act also authorizes the judge to suspend such violator's driver's license for six (6) months.
The act also encourages the Department of Transportation to alter any existing signage to educate the public about the increased punishment.	Any person who hires any person they know that fails to meet these minimum requirements commits a Class A misdemeanor.		The effective date is July 1, 2006.



### Legal Training Opportunities at TLETA

Criminal Investigation  
(September 18-29, 2006)

Law Enforcement Management and Administration  
(October 23-27, 2006)

#### Future Offerings:

Internal Affairs School

POST Rules Workshops

*“The real leader has no need to lead, he is content to point the way”*

*Henry Miller*

# Tennessee Law Enforcement Training Academy

3025 Lebanon Road  
Nashville, Tennessee 37024

Phone: 615-741-4448  
Fax: 615-741-3366

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ENFORCEMENT INSTRUCTION***

## Tennessee Supreme Court Case

**State of TN v. Williams**  
**193 S. W. 3d 502 (Tenn. 2006)**  
**May 23, 2006**

By: Ray Farris

### SUMMARY:

Information used to establish probable cause to get a search warrant provided by one of two arrested parties of a domestic dispute will have to be tested against the Aguilar-Spinelli test, not the citizen informant standard.

### FACTS:

Officers responded to a domestic disturbance call at the defendant's home. The defendant and his girlfriend were both arrested on charges of domestic violence. As the girlfriend was being arrested, she told an investigator where the defendant kept drugs

in the house. The investigator drew up an affidavit and obtained a search warrant based on this information. The search uncovered both cocaine and marijuana in the defendant's bedroom. The defendant moved to suppress the evidence because his girlfriend was not a citizen informant and the affidavit did not satisfy the two-prong standard for probable cause under State v. Jacumin.

### ISSUES:

Whether the information used to obtain a search warrant was provided by a "citizen informant" and presumptively reliable or whether the information, if not provided by a "citizen informant", nonetheless established probable cause under State v. Jacumin.

### HELD:

The girlfriend is not a "citizen informant"; however, the affidavit provided probable cause to issue the warrant.

### DISCUSSION

Constitutional principles require that a search warrant be issued only on the basis of a supporting affidavit that establishes probable cause. Probable cause generally requires reasonable grounds for suspicion, supported by circumstances indicative of an illegal act. A distinction is made between information provided by "citizen" or "bystander" informants and information provided by "criminal informants". Information supplied by a citizen informant is presumed to be reliable. Information from a criminal informant must be examined under the two-part analysis of Jacumin. Here the girlfriend told an officer about the defendant's possession of drugs only when she was in the midst of a domes-

tic disturbance, which led to her arrest. The girlfriend was not a citizen informant. Although the information used to obtain the search warrant was not provided by a citizen informant, it does establish probable cause under the two-prong analysis of Jacumin. First, the basis of knowledge prong in that the girlfriend saw drugs in the defendant's home and had firsthand knowledge of the facts. Second, the affidavit did not establish her reliability but, instead, established the information's reliability, that the girlfriend described specific drugs and the location of them. The information was also corroborated by the investigator's knowledge of the defendant's prior drug-related conviction.